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Title II of the 1934 Communications Act (47 U.S.C. sections 201-221) And "[w]hether a carrier is a common carrier ... does not depend upon whether its charter declares it to be such, ... but upon what it does."

BellSouth does not offer their broadband (xDSL) transport on a stand-alone basis. Each will only be provided over a phone line. Cable offers stand alone service.

Where is the competition being inhibited in this arena? Indeed CLECs and ISPs offer two advantages to the RBOCs:

- 1) each group is selling against the cable company separately and distinctly from the RBOC
- 2) each group buys transport and many other components from the RBOC at wholesale rates nearly equal to retail

When the RBOCs make statements like this: "because the market for broadband transmission is competitive, and impose costs that inhibit innovation and deployment of broadband," it negates the argument for forbearance. There is indeed competition. Yet the RBOCs will deploy whatever infrastructure is available in order to keep up with and compete against cable. No action by the FCC will change that very fact. Chairman Powell often mentions market forces. Well, here market forces will work as is - without dismantling TA96 any more.

If forbearance is given, VOIP and other such technologies will be defeated. At this time, cable companies are disrupting full, clean access to the internet by blocking ports. One such port is for TFTP. This port is required for MGCP call set up, effectively blocking VOIP from working on such a line. If the RBOCs are the only copper broadband provider, do you think that VOIP will proliferate or become the sole province of the two monopolies? Skype, Vonage, Pulver FWD, AT&T - all would be effectively blocked out of the market as the last mile would be totally controlled by the RBOCs.